S.I. RAJAH & ANOR.

v.

DATO' MAK HON KAM & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
LIM BENG CHOON J
[CIVIL SUIT NO. S7-22-599-90]
22 OCTOBER 1991

CIVIL PROCEDURE: *Interlocutory - Principles applicable - Serious questions - Balance of convenience - Whether damages are an adequate compensation - Relative strength of each party's case - Assumption by Court that party seeking injunction has the legal right which he asserts.*

The plaintiffs in this case sought an interlocutory injunction restraining the 1st to the 9th defendants from claiming to be members of the Progressive People's Party (PPP) alleging that their appointments to the PPP and thereon their appointment as office bearers were *ultra vires* the constitution of the PPP.

It was alleged that as a furtherance of the questionable acts of the defendants, the plaintiffs were wrongfully expelled by the party.

The issues were:

(1) Whether the admission of the defendants as members of the PPP was carried out in conformity with the constitution of the PPP and

(2) assuming that the answer to issue 1 is in the affirmative, whether the election of the defendants as office bearers of the PPP was in compliance with the constitution of the PPP.

Held:

[1] There is conflicting evidence on the question of whether the 1st defendant had ceased to be a member of the Malaysian Chinese Association (MCA) when he was purportedly admitted as a member of the PPP. In the circumstances, the Court must not try to resolve the matter based on such conflicting evidence. The matter can only be resolved at the trial proper.

[2] The 1st to 9th defendants were not nominated by their respective branches as required by r. 5(2) of the constitution of the PPP and the manner in which the Central Executive Committee took it upon themselves to appoint the defendants to hold posts in the Central Executive Committee was questionable. In the circumstances, there is doubt as to the validity of their appointments.

[3] The plaintiffs had not only raised triable issues which could not be resolved at an interlocutory stage, but have also established a strong *prima facie* case for doubting the existence of the legal right of the defendants, the exercise of which the plaintiffs seek to prevent.

[4] As the validity of the appointment of the defendants was questionable, so was the validity of the meeting which resulted in the expulsion of the 1st plaintiff. Further, there was no evidence to show that the 2nd plaintiff had no *locus standi* to institute the present action.

[5] The issues raised by the plaintiffs are also questions of the legal rights of all members of the PPP; therefore admission on matters of law or in ignorance of legal rights cannot constitute any basis of estoppel. This defeated the 1st defendant's contention that the 1st plaintiff had agreed to the decisions made at the Central Executive Committee meeting.

[6] As the triable issues raised by the plaintiffs constitute constitutional issues, the question as to whether the plaintiffs could be adequately compensated by an award of damages cannot therefore apply to this case.

[Plaintiffs' application for interlocutory injunction allowed with costs.]

Cases referred to:
American Cyanamid Co. v. Ethicon Ltd. [1975] AC 396 ***(foll)***
Professor Dr. A. Kahar Bador & Ors. v. N. Krishnan & Ors. [1983] 1 MLJ 407 ***(foll)***
Merchant Adventures Ltd. v. M. Grew & Co. Ltd. [1972] 1 Ch 242 ***(foll)***
Hubbard v. Pitt [1935] 3 WLR 201 ***(cit)***
I.T. Officer v. Shambhoo Dayal & Co. [1968] AIR 203 ***(foll)***
Woodford v. Smith [1970] 1 WLR 806 ***(foll)***

For the plaintiff - Dominic J. Puthucheary (K.S. Dass with him)
For the 1st plaintiff - M/s. Ranjit, Thomas & Kula
For the 2nd plaintiff - M/s. K. Sila Dass & Partners
For the defendant - Lal Harcharan Singh; M/s. L.H. Singh & Co.

JUDGMENT

Lim Beng Choon J:

The plaintiffs commenced an action against the twelve defendants on 26 August 1989 by writ accompanied by a statement of claim. They prayed for 9 reliefs but for the purpose of this judgment I need only mention 4 of the more important reliefs namely:

(i) A declaration that the 1st to 9th defendants and each of them were at all material times, and are, not members of the People's Progressive Party of Malaysia (the PPP);

(ii) a declaration that the appointment of the 1st to 9th defendants and each of them as office bearers of the PPP is null and void and *ultra vires* the rules of the PPP;

(iii) that the 1st to 9th defendants be restrained from acting or holding out as office bearers and/or interfering with the affairs of the PPP until the determination of this suit or further order;

(iv) a declaration that the 10th and 12th defendants or each of them having resigned from the respective posts to which they were elected at the Trienniel Delegate Conference held in September 1988 are no longer the office bearers of PPP.

On 28 August 1989 the plaintiffs made an application by way of summons in chambers (*ex parte*) for:

> An injunction restraining the 1st to 9th defendants and each of them from holding out and claiming to be members of the People's Progressive Party of Malaysia and/or from holding any principal posts of office bearers of, and representing the People's Progressive Party of Malaysia and an injunction restraining all the defendants and each of them and/or from conducting and/or interfering with the affairs, control and management of the People's Progressive Party of Malaysia and/or convening any meeting or extraordinary delegates conference of the People's Progressive Party of Malaysia until the determination of this suit of further order of this Honourable Court.

From the averments in the plaintiffs' statement of claim and their assertions contained in the supporting affidavit affirmed by the 1st plaintiff on 27 August 1989 (encl. 5), the allegations of the plaintiffs against the defendants may be briefly summarised as follows:

In or about the month of December 1988 or sometime prior to that the 1st defendant had secret discussions with the 10th defendant, the then president of PPP. Apparently as a result of the discussions a meeting of the Central Executive Committee (CEC) of PPP was convened on a very short notice of 2 days and in that meeting held on 14 December 1988 the following resolutions were passed:

(a) the 10th defendant, the national president, would step down and in his place the 1st defendant, Dato' Mak Hon Kam, be appointed as the president of PPP;

(b) the 11th defendant would step down as secretary-general and his post would be taken over by the 2nd defendant;

(c) Mr. S.R. Chandran would step down as treasurer-general and the 3rd defendant would be taking over the post;

(d) Mr. Chan Yoon Onn and Leng Hoo Keong, the two vice-presidents, would be replaced by 4th and 5th defendants respectively;

(e) the membership of CEC was allegedly expanded to include the 6th, 7th, 8th and 9th defendants.

The 1st plaintiff alleged that he protested these appointments because the 1st to 9th defendants were not only non-members of PPP but at the same time they were members of Malaysian Chinese Association (the MCA) especially the 1st and 2nd defendants. Their admission as members of PPP and their appointment as office bearers were *ultra vires* the rules of the PPP. Furthermore according to the rules of PPP neither the CEC nor the president has the power or authority to arbitrarily and unilaterally hand over the control and management of PPP to strangers. Because of his objection the defendants indicated that they would expel him from the party. To achieve this objective the defendants convened a meeting of PPP to regularise all the unlawful acts they had been perpetrating with regard to PPP and at that meeting the 1st plaintiff was accordingly expelled. The 1st plaintiff alleged that if the defendants were allowed to continue with their unlawful claim and acted as office bearers of PPP, irreparable damage would be done to the party which had all these years played a positive role in co-operating with the Government to maintain peace and harmony in the country. The 2nd plaintiff also affirmed an affidavit on 27 August 1989 adopting the assertions of the 1st plaintiff as stated in the latter's affidavit.

In reply to the 1st plaintiff's allegations the 1st defendant affirmed an affidavit on 22 November 1989 (encl. 15). The assertions made by him in affidavit may likewise be briefly summarised as follows:

The 1st defendant alleged that the 1st plaintiff was neither the vice president of PPP nor the chairman of the Johor branch of the PPP as claimed by him. That being so the plaintiffs had no interest in PPP nor had they any *locus standi* to make any claim. The 1st plaintiff was any way lawfully expelled from PPP on or about 30 July 1989 and is no longer a member of the PPP nor a member of the CEC of PPP. The 1st defendant also claimed that he had resigned from MCA and his letter of resignation dated 2 September 1988 was sent through his solicitor M/s. Jaswant & Loh to the branch secretary of MCA Ipoh division and the secretary-general of MCA headquarters in Kuala Lumpur. Before any application was made by the 1st defendant and the other former members of MCA to join PPP, they all were no longer members

of MCA. In any event the constitution of MCA provides that any member of MCA who joins another political party automatically ceases to be a member of MCA. The 1st defendant went on to say that two meetings of the CEC of PPP were held on 14 December 1988. Both were properly convened and both were attended by the 1st plaintiff who consented to the proceedings and approved all the decisions made thereat. Furthermore the 1st plaintiff knew that the 1st defendant had resigned from MCA and that the 1st defendant was lawfully a Category 'B' member of the PPP entitling him to hold office in the CEC of PPP. The defendants were lawfully elected and their appointments as office bearers were confirmed by the extraordinary general meeting held on 3 September 1988 at Ipoh. The 1st defendant therefore said that the 1st plaintiff had deliberately and maliciously embarked on a course to destroy or damage the good name of the PPP and was acting *mala fide*. In any event the plaintiffs' writ did not show any cause of action and/or the action was frivolous and vexatious and was an abuse of the process of Court.

Both the plaintiffs and the 1st defendant filed further affidavits but I do not propose to set out their respective allegations and counter allegations made in the affidavits as I shall be touching on some of the more important allegations and counter allegations in this judgment.

From a scrutiny of the pleadings of the plaintiffs and the affidavit evidence adduced the issues raised in this Court are two-fold namely:

(1) Was the admission of the 1st to the 9th defendants as members of PPP carried out in conformity with the constitution of PPP?

(2) Assuming the answer to issue 1 is in the affirmative the next question is: Was the election of the 1st to the 9th defendants as office bearers of PPP in compliance with the constitution of PPP?

Before I deal with the two aforementioned issues it is appropriate at this juncture to say a few words on the legal principles governing the grant or rejection of an interlocutory injunction. First I would refer to the famous case of *American Cyanamid Co. v. Ethicon Ltd*. [1975] AC 396. As the principles laid down in that case are so well known amongst the legal profession as well the judiciary I need only outline the principles laid down in that case and they are these:

1. The plaintiff must show that his claim is not frivolous and that there is a serious question which should go for trial. Having arrived at such conclusion the Court would then proceed to consider the balance of convenience.

2. In considering the question of balance of convenience the governing principle is whether either party could be adequately compensated by an award of damages and if not, or if the balance of convenience appears even, it may not be improper for the Court to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence.

The aforementioned principle (1) is well illustrated in *Professor Dr. A. Kahar Bador & Ors. v. N. Krishnan & Ors.* [1983] 1 MLJ 407 @ 409 where Hashim Yeop A. Sani (as he then was) said:

> An interlocutory injunction is merely provisional in its nature, and does not conclude a right. It is said that a person who comes to the Court for an interlocutory injunction is not required to make out a case which will entitle him at all events to relief at the hearing. It is enough if he can show that he has a fair question to raise as to the existence of the right which he alleges. It can be seen that in an application for an interlocutory injunction **the Court**

> **interferes on the assumption that the party who seeks its interference has the legal right which he asserts. He is not required to make out a clear legal title.** It is sufficient that he satisfies the Court that he has a fair question to raise as to the existence of the legal right which he sets up, **and that there are substantial grounds for doubting the existence of the alleged legal right, the exercise of which he seeks to prevent.** It has been accepted that the mere existence of a doubt as to the plaintiff's right to the property, interference with which he seeks to restrain, does not of itself constitute a sufficient ground for refusing an injunction. (Emphasis supplied)

Likewise the aforementioned principle (2) finds support in two cases. In the first case of *Merchant Adventures Ltd. v. M. Grew & Co. Ltd*. [1972] 1 Ch 242 it was held that if the plaintiff is likely to suffer unquantifiable damage then damages will not be an adequate remedy at the trial and the balance of convenience is in the plaintiff's favour. The second case is *Hubbard v. Pitt* [1935] 3 WLR 201. In this case an application was made for an interlocutory injunction to restrain the defendants from picketing the plaintiffs' business premises and displaying derogatory placards and the plaintiff was granted the interlocutory injunction since it could not be said that the plaintiffs could not succeed at the trial on their claim for a permanent injunction and the balance of convenience was therefore in favour of maintaining the *status quo*.

Reverting to the 1st issue tabulated above, it is to be noted that under r. 5 of the rules of the PPP (which I have referred them as the constitution of PPP and I shall hereinafter continue to refer them as such) it is provided *inter alia* that membership of the party "shall be open to any person ... who is **not** a member of any political party". Here the plaintiffs have alleged that the 1st to the 9th defendants were and still are members of MCA and to prove their point the 1st plaintiff in his supporting affidavit encl. 5 produced a letter which he annexed to the said affidavit as Exh. 'SIR2' which was written by the chief administrative director of MCA headquarters dated 14 August 1989 which reads:

> 14 August 1989.
> Mr. S.I. Rajah AMN, PIS, BSI
> 14, Jalan Dedap
> Taman Perdana
> 83000 Batu Pahat
> Johor.
>
> Dear Sir,
>
> We refer to your recent letter of 12 August enquiring about the membership status of Dato' Mak Hon Kam and Dato' Tan Tiew Bock. We hereby confirm that both Dato' Mak Hon Kam and Dato' Tan Tiew Bock appears in our membership register as at 15 December 1988 and hence are members of MCA at that point in time.
>
> Thank You
>
> Yours faithfully,
>
> Signature.
> (Michael Yeoh)
> Chief Administrative Director.

On the other hand the 1st defendant, Dato' Mak Hon Kam, has claimed that he was not a member of MCA at the material time and that he had resigned from MCA on 2 September 1988. He produced his letter of resignation annexed to his affidavit encl. 15 as Exh. "MHK5" which reads:

Dato' Mak Hon Kam,
No. 10, Jalan Matahari
West Pool Park,
31400 Ipoh

2 September 1988
The Secretary
Ipoh New Town Branch
Bangunan M.C.A. Perak,
No. 90-92, Jalan Sultan Idris Shah
30000 Ipoh

Dear Sir,

Resignation as MCA Member

I Dato' Mak Hon Kam (NRIC No. 4127619) hereby tender my resignation as a member of Malaysian Chinese Association with immediate effect.

Yours faithfully.
(Signature)
Dato' Mak Hon Kam.

He claimed that his letter of resignation was sent through his then solicitors with copies to the divisional executive secretary MCA Ipoh division and the secretary general of MCA at MCA headquarters Jalan Ampang Kuala Lumpur. Clearly there is conflicting evidence on the question of whether the 1st defendant had ceased to be a member of MCA when he was purportedly admitted as member of PPP. In the circumstances this Court must not try to resolve the matter based on such conflicting evidence. The matter can only be resolved at the trial of the case proper. I should also mention that none of the other defendants have filed in any affidavit to show that they were not members of MCA at the material time. That being so the plaintiffs' assertion that they **were** members of MCA at the time when they were admitted as members of PPP has not been controverted.

As regards to issue (2) tabulated above, again it is to be noted that the relevant part of r. 5(1), (2) and (3) of the constitution of PPP read:

Rule 5

(1) ... In the event of any vacancy occurring in Category A between Triennial Delegates Conference, it shall be filled by a member from among the members in Category B selected at a meeting of the Central Executive Committee by a simple majority.

(2) *Category B*

This Category shall comprise of branch representatives. In the event of any vacancy occurring in Category B it shall be filled by a member nominated by the branch entitled to the seat and accepted by the Central Executive Committee.

(3) *Category C*

This Category shall comprise of all members who are not in Category A or B by right or election.

It may be noted that there can be no dispute that the 1st to the 9th defendants were appointed as Category B members by committee members of CEC of PPP at the two meetings held on 14 December 1988 (see the minutes of the two meetings annexed in the bundle marked as Exh. "MHK11" to the affidavit of the 1st defendant encl. 15). They were never nominated by their respective branches as required under r. 5(2). After the 1st to 9th defendants had been

appointed to Category B membership, the CEC, at the 2nd meeting held on the same day about an hour after the termination of the 1st meeting, took upon themselves to appoint the 1st to the 9th defendants to hold posts in the CEC which I have adumbrated earlier. In the circumstances it is very much in doubt as to the validity of the appointments of the 1st to 9th defendants to hold the posts assigned to them by the CEC. Indeed there is no evidence at all that the said defendants were representatives of a particular branch of PPP. I would even go further to say that there is no evidence to show that the 1st to 9th defendants had complied with r. 6 of the constitution of PPP in their application to be members of PPP. None of the defendants had shown that they were issued with membership cards of PPP; neither had they shown that they had paid the entry fees and the 3 yearly subscription. On this point it is to be noted that one S.R. Chandran affirmed an affidavit on 12 July 1991 (encl. 7) alleging that he was the treasurer general of PPP from 1988 to 1991. He had conducted a search of the records of PPP and from his search he asserted that not only had the 1st, 2nd and 3rd defendants failed to pay the subscriptions fees, all the defendants had also failed to pay their entrance fees as stipulated in r. 7 of the constitution of PPP.

From the above discussions it is clear that the plaintiffs had not only raised triable issues which cannot be resolved at this interlocutory stage, they have even established a strong *prima facie* case for doubting the existence of the legal right of the defendants the exercise of which the plaintiffs seek to prevent.

I should also mention that the 1st defendant in his affidavit encl. 15 produced the minutes of the CEC meeting held on 30 July 1989. The meeting was held to discuss alleged conduct of the 1st plaintiff and whether he should be expelled from the PPP under r. 10 of the party constitution. The minutes of the meeting were produced and marked as Exh. "MHK15". It is to be noted that in his opening address the 1st defendant as purported president of PPP explained to the CEC members in attendance the purpose of calling the meeting and advised the members not to be personal in discussing the matter but rather on a matter of principle involved. It is to be noted that all the CEC members attended the meeting including the 1st to 9th defendants. Since the question of the validity of the appointments of the 1st to 9th defendants as members of PPP let alone as office bearers of PPP are in doubt, likewise the validity of the said meeting resulting in the expulsion of the 1st plaintiff is equally doubtful. It can only be resolved at the trial proper of this case. Even assuming that the expulsion of the 1st plaintiff had been properly carried out, this action and the application were instituted not by the 1st plaintiff alone. The position of the 2nd plaintiff who is also the co-applicant for the injunction must be taken into account. There is no evidence to show that the 2nd plaintiff had no *locus standi* to institute the action as a co-plaintiff and the application for injunction as a co-applicant. It follows therefore that in any case the triable issues raised by the plaintiffs must proceed to trial.

Another matter I should mention is that it has been contended that the decisions arrived at the CEC at the 14 December 1988 meeting was confirmed by the members of PPP who attended the extraordinary delegates conference held on 3 September 1989. In considering this proposition again I must say that in view of the triable issues raised by the plaintiffs as mentioned above the validity of this extraordinary meeting is also in doubt since apparently the 1st and 9th defendants also actively participated in the meeting. Moreover whether the appointment of the 1st to 9th defendants as Category B members could be sustained merely by the indorsement of members participating in the extraordinary delegates conference is questionable since their appointments must first be dealt with at the PPP branch level.

One final matter I should mention relates to the contention of the 1st defendant that the 1st plaintiff had attended the CEC meeting held on 14 December 1988 and agreed with the decisions made by the CEC at that meeting. Apparently the 1st defendant was suggesting that the 1st plaintiff is estopped from questioning the decisions of the CEC. The short answer to this contention of the 1st defendant is that the issues raised by the plaintiffs are questions of law or of the legal rights not only of the plaintiff but of all members of PPP to ensure that their party must comprise of only members of PPP and that PPP be under the control of the office bearers properly elected and not by strangers. That being the case admission on matters of law or in ignorance of legal rights cannot constitute any basis of estoppel - see *IT Officer v. Shambhoo Dayal & Co.* AIR [1969] ALL 203.

Turning to the question of balance of convenience it is important to note that the triable issues raised by the plaintiffs constitute constitutional issues in that the CEC have no right to appoint the 1st to 9th defendants as Category B members and office bearers of PPP in violation of the constitution of PPP. Putting it another way it is certainly detrimental to all the party members should the CEC be allowed to appoint strangers as Category B members and office bearers of the party. The question that the plaintiffs could be adequately compensated by an award of damages cannot therefore apply to this case - see the *Merchant Adventures Ltd*. case *(supra)* and also *Woodford v. Smith* [1970] 1 WLR 806.

For the above reason I allow the plaintiff's application for the interlocutory injunction prayed for with costs.

Also found at [1992] 1 CLJ 198